

California Bill Analysis, Assembly Committee, 2001-2002 Regular Session, Assembly Bill 1021

May 2, 2001
California Assembly
2001-2002 Regular Session

Date of Hearing: May 2, 2001

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Patricia Wiggins, Chair

AB 1021 (Goldberg) - As Amended: May 7, 2001

SUBJECT: Parking and business improvement areas: benefit assessments.

SUMMARY: States that the owners association is a private entity, but subject to the provisions of the Ralph M. Brown Act. Specifically, this bill:

- 1) Defines a non-profit association (NPA) for purposes of the law as an "owners association."
- 2) States that an owners association is a private entity, and not to be considered a public entity, nor its members public officials.
- 3) States that although the owners association is a private entity that it will comply with the provisions under the Ralph M. Brown Act (Brown Act) at all times when matters relating to the business improvement district (BID) are considered.
- 4) Eliminates the advisory board as a part of the BID.
- 5) Requires that all delinquent payments for assessments levied shall be charged interest and penalties.
- 6) Permits the renewal of any district previously established whose term has expired, by following specified procedures, with a term not to exceed 10 years.

EXISTING LAW:

- 1) States, according to the Property and Business Improvement District Act of 1994, that businesses can form BIDs in order to improve the esthetic value of their surroundings to attract or revitalize business.
- 2) Defines a "public official" to mean every member, officer, employee or consultant of a state or local government agency.
- 3) Defines a "local government agency" to mean a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.
- 4) Provides that members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.
- 5) Requires that all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided.

FISCAL EFFECT: None

COMMENTS:

- 1) The Property and Business Improvement District Law permits a city or county upon the request of property owners to establish a BID. BIDs are created because property owners in a specified area determine that their properties will

benefit by revitalizing buildings, promoting public events, hiring police protection, and cleaning streets - to list a few of their activities.

2)The formation of a BID is initiated with a written petition signed by property owners and submitted to the city council. Along with the petition, the property owners must outline the boundaries of the district, a description of the activities and improvements, and the amount of the assessment. An advisory board is then established to make recommendations to the city council on expenditure of revenues from the assessment. If all goes well, the city council consents to the creation of the proposed BID by resolution and within 90 days a hearing is held.

3)A BID consists of three entities: the city council, the advisory board and the NPA. The city council approves the BID, the advisory board provides oversight monitoring by approving budgets and reporting back to the council, and the NPA, is a non-profit entity charged with administrating the day-to-day activities of the BID.

4)Since its inception in 1994, the BID Act has given way to approximately 65 BIDs. Graffiti has been removed, farmers' markets have appeared and police protection presence has been felt in urban areas-all activities that encourage patronage to businesses that otherwise would have been less appealing to visit. Although BIDs have been conducting positive changes in their respective districts, a few have been experiencing turmoil within their ranks.

5)A property owner in a BID in Southern California brought forth a lawsuit against the BID to which he belonged. According to the plaintiff, he was not allowed to attend a meeting of his own NPA. The plaintiff believed the NPA to be a public entity, subject to the Brown Act and as such giving him the right to attend the meetings. However, the NPA believed itself to be a private, non-profit body not subject to open meeting laws and denied access to the plaintiff. The BID Act is not clear on this point.

6)In the first ruling of the lawsuit, the court ruled against the plaintiff stating that the property owners association was not subject to the Brown Act because it was not a creation of the city and that it had pre-existed the BID by two years. However, on appeal, the court reversed the first decision. The appellate court stated that because the city played a role in bringing the NPA into existence that it was a public entity.

7)Meetings and discussions between the sponsor, plaintiff, BIDs, other opponents, and legislative staff were held to find common ground. The sponsor's main argument was that subjection to the red tape that results from being considered a public entity would delay actions on activities. Additionally, persons working for the BID were not willing to disclose financial information for what they considered to be volunteer work and would result in their resignations. On the other hand, the plaintiff and fellow opponents of the bill wanted the

NPAs to be deemed public entities so that they would be subject to open meeting laws in order that they would have access to the NPA board activities. In the end, a compromise that was struck did not appease either side completely. However, this bill satisfies the NPAs' need to be considered private entities and the opposition is content because the NPAs are subject to the open meetings laws under the Brown Act-such is a compromise.

8)This bill also repeals the section that provides for an advisory board. According to both parties involved with the bill, the advisory board did not serve its purpose as the oversight mechanism that is was created to be. Although, subject to the Brown Act, the board seldom met, did not submit their annual reports to city council and often consisted of the same members of the NPA. This bill eliminates the advisory board and substitutes the owners associations.

9)PROPOSED AMENDMENT: The Committee may wish to consider amending the bill to subject the "owners associations", in addition to the Ralph M. Brown, to the Public Records Act.

REGISTERED SUPPORT / OPPOSITION:

Support

CA Business Improvement District Coalition [SPONSOR]

California Newspaper Publishers Association CNPA Services, Inc.

Opposition

Howard Jarvis Taxpayers Association

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